

available for audit, whichever period expires the later, but in any event not later than sixty (60) days after receiving the request, the Tax Collector shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the Tax Collector of the amount that must be paid as a condition of issuing the certificate. Failure of the Tax Collector to mail the notice will release the purchaser from any further obligation to withhold from the purchase price as above provided. The time within which the obligation of the successor may be enforced shall start to run at the time the operator sells his business or at the time that the determination against the operator becomes final, whichever event occurs later. **(Amended by Ord. No. 3372 (N.S.), effective 7-23-69; amended by Ord. No. 3833 (N.S.), effective 3-9-72; amended by Ord. No. 6145 (N.S.), effective 9-10-81)**

SEC. 22.214. VIOLATIONS: INFRACTION. Any operator or other person who fails or refuses to register as required herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the Tax Collector, or who renders a false or fraudulent return or claim, is guilty of an infraction, and is punishable as aforesaid. Any person required to make, render, sign or verify any report or claim who makes false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made is guilty of an infraction and is punishable as aforesaid.
(Amended by Ord. No. 5200 (N.S.), effective 8-10-78)

SEC. 22.215. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional.

SEC. 22.216. USE OF TOURIST TAX REVENUES. (Section 22.216, Utilization of Revenue, repealed by Ord. No. 4119 (N.S.), effective 7-20-73; new Section 22.216 added by Ord. No. 6159 (N.S.), effective 10-15-81; Section 22.216 repealed by Ord. 6916 (N.S.), operative 3-1-85)



**Dan McAllister
County of San Diego
Treasurer-Tax Collector**

UNIFORM TOURIST TAX ORDINANCE

(Transient Occupancy Tax)

Effective
August 1, 2005

Amended
As of
August 2, 2005

CHAPTER 2
SAN DIEGO COUNTY
UNIFORM TRANSIENT OCCUPANCY TAX
ORDINANCE*

*Note--Added by Ord. No. 2708 (N.S.), effective 10-1-64.

SEC. 22.201. TITLE. This chapter shall be known as the Uniform Tourist Tax Ordinance of the County of San Diego. (Amended by Ord. No. 6145 (N.S.), effective 9-10-81)

SEC. 22.202. DEFINITIONS. Except where the content otherwise requires, the definitions given in this section govern the construction of this chapter.

(a) Person. "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, religious group, or any other group or combination acting as a unit.

(b) Hotel. "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof. "Hotel" does not mean any of the following: Any hospital, convalescent home, sanitarium, medical clinic, rest home, home for aged people, foster home, or other similar facility operated for the care or treatment of human beings; any asylum, jail, prison, orphanage or other facility in which human beings are detained and housed under legal restraint; any housing owned or controlled by any educational institution and used exclusively to house students, faculty or other employees, and any fraternity or sorority house or similar facility occupied exclusively by students and employees of such educational institutions, and officially recognized or approved by it; any housing operated or used exclusively for religious, charitable or educational purposes by any organization having qualifications for exemption from property taxes under the laws of California; any housing owned by a governmental agency and used to house its employees or for governmental purposes; any camp as defined in the Labor Code or other housing furnished by an employer exclusively for employees, any camp as defined in the Insurance Code, whether profit or non-profit, offering recreational activities and operated exclusively for minors under the age of sixteen (16).

(c) Occupancy. "Occupancy" means the use or possession, or the right to the use or possession of any room or rooms or portion thereof, in any hotel for dwelling, lodging, or sleeping purposes.

(d) Transient. "Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any person who in fact exercises occupancy or in fact is entitled to occupancy for a period of thirty-one (31) days or more, counting portions of calendar days as full days, shall be deemed not to have been a transient with respect to the first thirty (30) days of occupancy or entitlement to occupancy.

(e) Rent. "Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash credits, and property and services of any kind or nature, without any deduction therefrom whatsoever.

(f) Operator. "Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any

same and the fact that the Tax Collector of the operator liable for the same and the fact that the Tax Collector has complied with all provisions of this ordinance in the determination of the amount required to be paid. From the time of the filing for record, the amount required to be paid together with penalties and interest constitutes a lien upon all real property in the county owned by the operator or afterwards and before the lien expires acquired by him. The lien has the force, effect and priority of a judgment lien and shall continue for ten (10) years from the time of filing of the certificate unless sooner released or otherwise discharged.

(c) **Priority and Lien of Tax.** The amounts required to be paid by any operator under this chapter with penalties and interest shall be satisfied first in any of the following cases:

- (1) Whenever the person is insolvent.
- (2) Whenever the person makes a voluntary assignment of his assets.
- (3) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all debts due from the deceased.
- (4) Whenever the estate and effects of an absconding, concealed or absent person required to pay any amount under this ordinance are levied upon by process of law. This ordinance does not give the county a preference over any recorded lien which attached prior to the date when the amounts require to be paid become a lien.

The preference given to the county by this Section shall be subordinate to the preference given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure.

(d) **Warrant for Collection of Tax.** At any time within three (3) years after any operator is delinquent in the payment of any amount herein required to be paid or within three (3) years after the last recording of a certificate of lien under Section 22.213(b), the Tax Collector may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the county under this chapter. The warrant shall be directed to any sheriff, marshal or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The Tax Collector may pay or advance to the sheriff, marshal or constable, the same fees, commissions and expenses for his services as are provided by law for similar services pursuant to a writ of execution. The Tax Collector, and not the court, shall approve the fees for publication in a newspaper.

(e) **Seizure and Sale.** At any time within three (3) years after any operator is delinquent in the payment of any amount, the Tax Collector may forthwith collect the amount in the following manner:

The Tax Collector shall seize any property, real or personal, of the operator and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any penalties and interest imposed for the delinquency and any costs incurred on account of the seizure and sale. Any seizure made to collect taxes due shall be only of property of the operator not exempt from execution under the provisions of the Code of Civil Procedure.

(f) **Successor's Liability - Withholding by Purchaser.** If any operator liable for any amount under this chapter sells out his business or quits the business, his successor or assignee shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the Tax Collector showing that it has been paid or a certificate stating that no amount is due.

(g) **Liability of Purchaser: Release.** If the purchaser of a hotel fails to withhold from the purchase price as required, he shall become personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within thirty (30) days after receiving a written request from the purchaser for a certificate, or within thirty (30) days from the date the former owner's records are made

SEC. 22.211. RECORDS. It shall be the duty of every operator liable for the collection and payment to the County of any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the County including but not limited to all business records, bank statements and copies of Federal and State income tax returns filed by the operator with the State of California or the United States of America, which records the Auditor and Tax Collector shall have the right to inspect at all reasonable times.

All returns and payments submitted by each operator shall be treated as confidential by the Tax Collector and shall not be released by him except upon order of a court of competent jurisdiction or to an officer or agent of the United States, the State of California, the County of San Diego or any city in said county for official use only. **(Amended by Ord. No. 3372 (N.S.), effective 7-23-69; amended by Ord. No. 3650 (N.S.), effective 3-11-71)**

SEC. 22.212. REFUNDS.

(a) **Erroneously or Illegally Collected.** Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the county under this chapter it may be refunded as provided in subparagraphs (b) and (c) of this section provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax Collector within three years of the date of payment. The claim shall be on forms furnished by the Tax Collector.

(b) **Credit Against Taxes.** An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Tax Collector that the person from whom the tax has been collected was not a transient; provided however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the person from whom the tax was collected or credited to rent subsequently payable by that person to the operator.

(c) **Repayment to Transient.** A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the county by filing a claim in the manner provided in the subparagraph (a) of this section, but only when the tax was paid by the transient directly to the Tax Collector, or when the transient having paid the tax to the operator, establishes to the satisfaction of the Tax Collector that the transient has been unable to obtain a refund from the operator who collected the tax.

(d) **Records Required.** No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto. **(Amended by Ord. No. 3372 (N.S.), effective 7-23-69)**

SEC. 22.213. ACTIONS TO COLLECT.

(a) **Responsibility.** Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the county. Any such tax collected by an operator which has been paid to the county shall be deemed a debt owed by the operator to the county. Any person owing money to the county under the provisions of this chapter shall be liable to an action brought in the name of the County of San Diego for the recovery of such amount.

(b) **Recording Certificate: Lien.** If any amount required to be paid to the county under this chapter is not paid when due, the Tax Collector may within three (3) years after the amount is the due file for record in the office of the San Diego County Recorder a certificate specifying the amount of tax, penalties and interest due, the name and address as it appears on the records of the Tax Collector of the operator liable for the

other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed

an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or by the managing agent shall, however, be considered to be compliance by both.

(g) Tax Collector. "Tax Collector" means the Tax Collector of the County of San Diego.

(Amended by Ord. No. 3372 (N.S.), effective 7-23-69; amended by Ord. No. 3833 (N.S.), effective 3-9-72)

Cross reference(s)--Definitions, § [12.101](#) et seq.

SEC. 22.203. TAX IMPOSED. For the privilege of providing lodging in any hotel, each operator is subject to and shall pay a tax in the amount of eight percent (8%) of the rental receipts charged by the operator. Said tax constitutes a debt owed by the operator to the County which is extinguished only by payment by the operator to the County. The tax rate of 8% shall take effect on August 1, 2005. **(Amended by Ord. No. 3170 (N.S.), effective 4-1-68; amended by Ord. No. 4119 (N.S.), operative 7-1-73; amended by Ord. No. 6916 (N.S.), effective 3-1-85; amended by Ord. No. 7428 (N.S.), effective 2-4-88; amended by Ord. No. 7778 (N.S.), effective 8-23-90; amended by Ord. No. 9730 (N.S.), effective 8-2-05)**

SEC. 22.204. EXEMPTIONS. No tax shall be imposed:

(a) Upon any person as to whom, or any occupancy as to which, it is beyond the power of the County to impose the tax herein provided;

(b) Upon any Federal or State of California officer or employee when on official business;

(c) Upon any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty;

(d) Where the rent is at the rate of four dollars (\$4.00) per day or less;

(e) Upon any person who receives a free or complimentary room where the only consideration provided within the definition of rent in Section 22.202(3) is publicity value for the hotel. **(Amended by Ord. No. 3833 (N.S.), effective 3-9-72; amended by Ord. No. 4120 (N.S.), effective 7-26-73)**

SEC. 22.205. OPERATOR'S DUTIES. Each operator shall collect the tax imposed by this chapter to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided.

SEC. 22.206. REGISTRATION. Within thirty (30) days after the effective date of this chapter, or within thirty (30) days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register said hotel with the Tax Collector and obtain from his a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following:

- (1) The name of the operator;
- (2) The address of the hotel;

- (3) The date upon which the certificate was issued;
- (4) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Tourist Tax Ordinance by registering with the Tax Collector for the purpose of collecting from transients the Tourist Tax and remitting said tax to the Tax Collector. This certificate

does not authorize any person to conduct any lawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this County. This certificate does not constitute a permit." **(Amended by Ord. No. 6145 (N.S.), effective 9-10-81)**

SEC. 22.207. REPORTING AND REMITTING. Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Tax Collector, make a return to the Tax Collector, on forms provided by him, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the Tax Collector.

Returns filed or taxes remitted and actually received by the Tax Collector on or before the last day of the month following the close of each calendar quarter shall be deemed timely filed or remitted. Returns filed or taxes remitted by mail shall be deemed timely filed only if the envelope or similar container enclosing the returns or taxes is addressed to the Tax Collector, has sufficient postage and bears a United States postmark or a postage meter imprint prior to midnight on the last day for reporting or remitting without penalty. If such envelope or other container bears a postage meter imprint as well as a United States post office cancellation mark, the latter shall govern in determining whether the filing or remittance is timely. The Tax Collector may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax and he may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the County until payment thereof is made to the Tax Collector. **(Amended by Ord. No. 3372 (N.S.), effective 7-23-69; amended by Ord. No. 3833 (N.S.), effective 3-9-72)**

SEC. 22.208. PENALTIES AND INTEREST.

- (a) **Original Delinquency.** Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of five percent (5%) of the amount of the tax in addition to the amount of the tax.
- (b) **Continued Delinquency.** Any operator who fails to remit any delinquent remittance on or before the first day of the next calendar month following the date on which the remittance first became delinquent shall pay a second delinquency penalty of five percent (5%) of the amount of the tax in addition to the amount of the tax and the five percent (5%) penalty first imposed.
- (c) **Fraud.** If the Tax Collector determines that the nonpayment of any remittance due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs (a) and (b) of this section.
- (d) **Interest.** In addition to the penalties imposed, any operator who fails to remit any tax imposed by this Chapter shall pay interest at the rate of one percent (1%) per month or fraction thereof on the amount of the tax exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- (e) **Penalties Merged with Tax.** Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

- (f) **Audit Deficiency.** If, upon audit by the County, an operator is found to be deficient in his return or his remittance or both, the Tax Collector shall immediately notify the operator of the net deficiency and any delinquency penalties if applicable. If the operator fails or refuses to pay the deficient amount and applicable penalties within fourteen (14) days after the date of the Tax Collector's notice, the penalties prescribed in paragraph (b) above shall apply, using the fifteenth (15) day after the date of the Tax Collector's notice as the date when the continued delinquency penalty first applies. **(Amended by**

Ord. No. 2801 (N.S.), effective 4-5-65; amended by Ord. No. 3372 (N.S.), effective 7-23-69; amended by Ord. No. 3833 (N.S.), effective 3-9-72)

SEC. 22.209. FAILURE TO COLLECT AND REPORT TAX. DETERMINATION OF TAX BY TAX COLLECTOR.

If any operator shall fail or refuse to collect said tax and to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter or if such operator maintains records which are inadequate to show the amount of tax due, the Tax Collector shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Tax Collector shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the Tax Collector shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. Such operator may within fourteen (14) days after the serving or mailing of such notice make application in writing to the Tax Collector for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed the tax, interest and penalties, if any, determined by the Tax Collector shall become final and conclusive and immediately due and payable. If such application is made, the Tax Collector shall give not less than five (5) days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing the Tax Collector shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fourteen (14) days unless an appeal is taken as provided in Section 22.210. **(Amended by Ord. No. 3650 (N.S.), effective 3-11-71; amended by Ord. No. 3833 (N.S.), effective 3-9-72)**

SEC. 22.210. APPEAL. Any operator aggrieved by any decision of the Tax Collector with respect to the amount of such tax, interest and penalties, if any, may appeal to the Board of Supervisors by filing a notice of appeal with the Clerk of the Board of Supervisors within fourteen (14) days of the serving or mailing of the determination of tax due. The Board of Supervisors shall fix a time and place for hearing such appeal, and the Clerk of the Board of Supervisors shall give notice in writing to such operator at his last known place of address. The findings of the Board of Supervisors shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice. **(Amended by Ord. No. 3833 (N.S.), effective 3-9-72)**